

**Remarks**

This Application has been carefully reviewed in light of the Office Action mailed September 27, 2004. Applicant appreciates the Examiner's consideration of the Application. Although Applicant believes all pending claims are allowable over the rejections made by the Examiner without amendment, Applicant has made clarifying amendments to independent Claims 1, 8, 15, and 22. At least certain of these amendments are not considered narrowing, and none are considered necessary for patentability. Applicant respectfully requests reconsideration and allowance of all pending claims.

**I. The Claims are Allowable over the Provisional Double Patenting Rejections**

The Examiner provisionally rejects Claims 1, 6-8, 13-15, and 20-22 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1, 4-5, 10-11, 21-22, and 32 of co-pending U.S. Application Serial No. 10/032,945 (the "945 Application"). Applicant respectfully disagrees.

**A. The Obviousness-Type Double Patenting Standard**

In determining whether a non-statutory basis exists for a double patenting rejection, the first question to be asked is – does any claim in the application define an invention that is merely an obvious variation of an invention claimed in the patent? *See* M.P.E.P. § 804(II)(B)(1). An obviousness-type double patenting rejection is proper only when the claimed subject matter is not patentably distinct from the subject matter claimed in a commonly owned patent. *Id.* The term "distinct" means two or more subjects as disclosed are related, for example, as combination and sub-combination thereof, process and apparatus for its practice, process and product made, etc., but are capable of separate manufacture, use, or sale as claimed, and are patentable (novel and unobvious) over each other (though they may each be unpatentable because of prior art). *See* M.P.E.P. § 802.01. ***Any analysis employed in an obviousness-type double patenting rejection parallels the guidelines for analysis of a 35 U.S.C. § 103 obviousness determination.*** *Id.* A double patenting rejection must rely on a comparison with the claims in an issued or to be issued patent, whereas an obviousness rejection based on the same patent under 35 U.S.C. § 102(e)/103(a) relies on a comparison with what is disclosed (whether or not claimed) in the same issued patent. *See* M.P.E.P. § 804(III).

**B. The Applicable Obviousness Standard under 35 U.S.C. § 103**

The question raised under 35 U.S.C. § 103 is whether the prior art (or in this case, the '945 Application) taken as a whole would suggest the claimed invention taken as a whole to one of ordinary skill in the art at the time of the invention. Accordingly, even if all elements of a claim are disclosed in various prior art references (or in this case, the '945 Application), which is certainly not the case here as the Examiner acknowledges, the claimed invention taken as a whole cannot be said to be obvious without some reason given in the prior art (or in this case, the '945 Application) why one of ordinary skill at the time of the invention would have been prompted to modify the teachings of a reference (or in this case, the '945 Application) to arrive at the claimed invention. It is clear based at least on the many distinctions discussed below that the proposed modifications to the '945 Application do not, taken as a whole, suggest the claimed invention, taken as a whole.

The M.P.E.P. sets forth the strict legal standard for establishing a *prima facie* case of obviousness based on modification or combination of prior art references. "To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references where combined) must teach or suggest all the claim limitations." M.P.E.P. § 2142, 2143. The teaching, suggestion, or motivation for the modification or combination and the reasonable expectation of success must both be found in the prior art and cannot be based on an applicant's disclosure. *See Id.* (citations omitted). "Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art at the time of the invention." M.P.E.P. § 2143.01. Even the fact that references can be modified or combined does not render the resultant modification or combination obvious unless the prior art teaches or suggests the desirability of the modification or combination. *See Id.* (citations omitted). Moreover, "To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. All words in a claim must be considered in judging the patentability of that claim against the prior art." M.P.E.P. § 2143.03 (citations omitted).

The governing Federal Circuit case law makes this strict legal standard even more clear.<sup>1</sup> According to the Federal Circuit, “a showing of a suggestion, teaching, or motivation to combine or modify prior art references is an essential component of an obviousness holding.” *In re Sang-Su Lee*, 277 F.3d 1338, 1343, 61 U.S.P.Q.2d 1430, 1433 (Fed. Cir. 2002) (quoting *Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 1124-25, 56 U.S.P.Q.2d 1456, 1459 (Fed. Cir. 2000)). “Evidence of a suggestion, teaching, or motivation . . . may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, the nature of the problem to be solved.” *In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). However, the “range of sources available . . . does not diminish the requirement for actual evidence.” *Id.* Although a prior art device “may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so.” *In re Mills*, 916 F.2d at 682, 16 U.S.P.Q.2d at 1432. *See also In re Rouffet*, 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453, 1457-58 (Fed. Cir. 1998) (holding a *prima facie* case of obviousness not made where the combination of the references taught every element of the claimed invention but did not provide a motivation to combine); *In Re Jones*, 958 F.2d 347, 351, 21 U.S.P.Q.2d 1941, 1944 (Fed. Cir. 1992) (“Conspicuously missing from this record is any evidence, other than the PTO’s speculation (if that can be called evidence) that one of ordinary skill in the herbicidal art would have been motivated to make the modification of the prior art salts necessary to arrive at” the claimed invention.). Even a determination that it would have been obvious to one of ordinary skill in the art at the time of the invention to try the proposed modification or combination is not sufficient to establish a *prima facie* case of obviousness. *See In re Fine*, 837 F.2d 1071, 1075, 5 U.S.P.Q.2d 1596, 1599 (Fed. Cir. 1988).

In addition, the M.P.E.P. and the Federal Circuit repeatedly warn against using an applicant's disclosure as a blueprint to reconstruct the claimed invention. For example, the M.P.E.P. states, "The tendency to resort to 'hindsight' based upon applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the

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<sup>1</sup> Note M.P.E.P. 2145 X.C. ("The Federal Circuit has produced a number of decisions overturning obviousness rejections due to a lack of suggestion in the prior art of the desirability of combining references.").

basis of the facts gleaned from the prior art." M.P.E.P. § 2142. The governing Federal Circuit cases are equally clear. "A critical step in analyzing the patentability of claims pursuant to [35 U.S.C. § 103] is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. . . . Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one 'to fall victim to the insidious effect of a hindsight syndrome wherein that which only the invention taught is used against its teacher.'" *In re Kotzab*, 217 F.3d 1365, 1369, 55 U.S.P.Q.2d 1313, 1316 (Fed. Cir. 2000) (citations omitted). In *In re Kotzab*, the court noted that to prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the references that create the case of obviousness. *See id.* *See also, e.g., Grain Processing Corp. v. American Maize-Products*, 840 F.2d 902, 907, 5 U.S.P.Q.2d 1788, 1792 (Fed. Cir. 1988). Similarly, in *In re Dembiczak*, the Federal Circuit reversed a finding of obviousness by the Board, explaining that the required evidence of such a teaching, suggestion, or motivation is essential to avoid impermissible hindsight reconstruction of an applicant's invention:

Our case law makes clear that the best defense against the subtle but powerful attraction of hind-sight obviousness analysis is *rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references*. Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability—the essence of hindsight.

175 F.3d at 999, 50 U.S.P.Q.2d at 1617 (emphasis added) (citations omitted).

**C. A *Prima Facie* Case of Obviousness has not been Established**

Applicant respectfully submits that a *prima facie* case of obviousness has not been established with respect to Claims 1, 6-8, 13-15, and 20-22 of the present Application in view of Claims 1, 4-5, 10-11, 21-22, and 32 of the '945 Application. Thus, Applicant respectfully requests the Examiner to withdraw the provisional obviousness-type double patenting rejection. As an example, Applicant discusses Claim 8 of the present Application, which the Examiner discusses in relation to Claim 10 of the '945 Application. Claim 8 of the present Application recites patentable distinctions from Claim 10 of the '945 Application.

For example, Claim 8 of the present Application recites (prior to the amendments presented in this Response) “providing a plurality of users access to the master global content directory through one or more secondary content directories, the secondary content directories comprising one or more product classes, each product class being mapped to one or more product classes in the master global content directory and having one or more associated class pointers that identify the one or more product classes in the master global content directory to which the product class is mapped,” which is not specifically recited in Claim 10 of the ‘945 Application. The Examiner acknowledges that the ‘945 Application fails to disclose this entire element of Claim 8. (*See* Office Action, Pages 3-4) However, the Examiner asserts that it would have been obvious to modify the independent claims of the ‘945 Application to recite various limitations recited in the independent claims of the present case “in order to better meet the user’s requirement.” (Office Action, Pages 3-4)

Applicant respectfully submits that this statement, made with the benefit of hindsight with Applicant’s claims in view, is insufficient to establish a *prima facie* case of obviousness. In particular, Applicant respectfully submits there still has been no showing of the required teaching, suggestion, or motivation to modify Claim 10 of the ‘945 Application to recite at least the above-identified limitations recited in Claim 8 of the present Application. Accordingly, since the ‘945 Application and the prior art fails to provide the required teaching, suggestion, or motivation to modify Claim 10 of the ‘945 Application in the manner proposed, Applicant respectfully submits that the requirements set forth in the M.P.E.P. and the governing Federal Circuit case law for demonstrating a *prima facie* case of obviousness (or in this case, a *prima facie* case of obviousness-type double patenting) have not been met.

For at least these reasons, Applicant respectfully requests that the Examiner withdraw the provisional non-statutory obviousness-type double patenting rejection of independent Claim 8 and its dependent claims. For at least analogous reasons, Applicant respectfully requests that the Examiner withdraw the provisional non-statutory obviousness-type double patenting rejection of independent Claims 1, 15, and 22 and their dependent claims.

**II. The Claims are Allowable over *Van Huben***

The Examiner rejects Claims 1-5, 8-12, 15-19, and 22 under 35 U.S.C. § 102(a) as being anticipated by U.S. Patent 6,094,654 to Van Huben, et al. ("*Van Huben*"). Applicant respectfully disagrees and discusses Claim 1 as an example.

*Van Huben* merely discloses a design control system available for use in connection with the design of integrated circuits and other elements of manufacture having many parts that need to be developed in a concurrent engineering environment. The inputs to the system may be provided by users and systems located at geographically disperse locations. In its Background section, *Van Huben* discusses problems with the prior art and goals of its invention. In particular, *Van Huben* states that "[c]oncurrent engineering is required among many engineers working in parallel and at different locations worldwide" to bring a product through the design stage and to a release state. (Column 3, Line 64-Column 4, Line 3) "During product development, assistance is required from other departments such as manufacturing, operations scheduling, etc. Even the vendors and customers should be integrated into the product development process to guarantee [that] the product developed will be accepted in the market." (Column 4, Lines 11-16) In other words, "[t]here is a need for integrators/coordinators/model builders and the designers to work together to create a next release. Information from different people in different forms must be collected aiming at a final good design." (Column 4, Lines 17-21) "During all of the process[,] concurrent engineering, particularly for the needs of complex very large scaled integrated system design, needs to keep everything in order and on track, while allowing people to work on many different aspects of the project at the same time with differing authorizations of control from anywhere at any time." (Column 4, Lines 23-29)

*Van Huben* further discloses that "in modern data processing systems, the need often arises (as we [*Van Huben*] provide) to aggregate disparate data objects [i.e. files associated with the design of a product] into a cohesive collection. These data objects may reside at various levels of completion, spanning multiple versions and/or repositories in a hierarchical, multi-tiered data management system." (Column 4, Lines 55-61)

As the above summary (and the remainder of *Van Huben*) makes clear, *Van Huben* is directed to a system for assisting multiple, geographically distributed engineers working in

parallel to jointly design a product (e.g., an integrated circuit) through unique data management techniques. However, *Van Huben* fails to disclose, teach, or suggest various limitations recited in Claim 1, both before and after the amendments presented in this Response.

**A. *Van Huben* is Unrelated to Electronic Commerce**

For example, *Van Huben* appears entirely unrelated to electronic commerce. Instead, *Van Huben* is directed to a system for assisting multiple, geographically distributed engineers working in parallel to jointly design a product (e.g., an integrated circuit) through unique data management techniques. The design of a product and electronic commerce are simply not the same. Thus, *Van Huben* fails to disclose, teach, or suggest an “*electronic commerce system*,” as recited in Claim 1 prior to amendments presented in the Response, and “*facilitat[ing] a commercial transaction involving one or more products*,” as recited in Claim 1 as amended.

**B. *Van Huben* Fails to Disclose, Teach, or Suggest the Master Global Content Directory as Recited in Claim 1**

As another example, the cited portions of *Van Huben* fail to disclose, teach, or suggest “a master global content directory including a plurality of product classes organized in a hierarchy, *each product class categorizing a plurality of products and associated with one or more attributes of the products categorized in the product class*, at least one of the product classes having one or more associated product pointers that identify one or more of the databases,” as recited in Claim 1. Even assuming for the sake of argument that the projects (a project being a design for a component or a collection of components) disclosed in *Van Huben* could be equated with the one or more products recited in Claim 1, any hierarchy disclosed in the data management system of *Van Huben* would still be organized merely by file attributes of files associated with the projects. For example, *Van Huben* discloses organizing files of a project by name, type, library, version, and level. (See Column 32, Lines 30-40 and Figure 10) Applicant respectfully submits that these classes of files cannot be equated with the “plurality of product classes organized in a hierarchy” as recited in Claim 1.

Moreover, Applicants respectfully submit that file attributes cannot be equated with “attributes of the products categorized in the product class.” Thus, *Van Huben* clearly fails to

disclose, teach, or suggest “*each product class [organized in the hierarchy] categorizing a plurality of products and associated with one or more attributes of the products categorized in the product class,*” as recited in Claim 1. Instead, *Van Huben* is directed to a file management system [not an electronic commerce system] that organizes files or data objects [not products] based on attributes of the files or data objects [not on one or more attributes of the products categorized in the product classes organized in the hierarchy].

For at least these reasons, *Van Huben* clearly fails to disclose, teach, or suggest “*a master global content directory including a plurality of product classes organized in a hierarchy, each product class categorizing a plurality of products and associated with one or more attributes of the products categorized in the product class, at least one of the product classes having one or more associated product pointers that identify one or more of the databases,*” as recited in Claim 1.

**C. *Van Huben* Fails to Disclose, Teach, or Suggest the Secondary Content Directories as Recited in Claim 1**

As another example, *Van Huben* fails to disclose, teach, or suggest “*one or more secondary content directories including one or more product classes, each product class being mapped to one or more product classes in the master global content directory and having one or more associated class pointers that identify the one or more product classes in the master global content directory to which the product class is mapped,*” as recited in Claim 1 prior to the amendments presented in this Response. Applicant reiterates that *Van Huben* fails to disclose, teach, or suggest any “product classes,” as recited in Claim 1. The classes disclosed in *Van Huben* organize files or data objects [not products] based on attributes of the files or data objects [not on one or more attributes of the products categorized in the product classes organized in the hierarchy]. Thus, at a minimum, *Van Huben* fails to disclose, teach, or suggest “*one or more secondary content directories including one or more product classes,*” as recited in Claim 1 prior to the amendments presented in this Response.

Even assuming, however, that the classes disclosed in *Van Huben* could be equated with the product classes recited in Claim 1 (which they cannot), *Van Huben* would still fail to disclose, teach, or suggest the “one or more secondary content directories” recited in Claim 1.



The Examiner apparently equates sub-directories disclosed in *Van Huben* with the “one or more secondary content directories” recited in Claim 1, citing column 32, lines 20-60 of *Van Huben*. The cited portion of *Van Huben*, which describes Figure 10, discloses a primary directory (LIB\_DIR) and various sub-directories (e.g., VERS1). These sub-directories can include further segregations. It is clear, however, that the primary directory is a base directory from which these various sub-directories and further segregations depend.

As demonstrated above, the primary directory disclosed in *Van Huben* cannot be equated with the “master global content directory” recited in Claim 1. Additionally, the sub-directories of *Van Huben* cannot be equated with one or more secondary content directories that include one or more product classes, each product class being mapped to one or more product classes in the master global content directory and having one or more associated class pointers that identify the one or more product classes in the master global content directory to which the product class is mapped, as recited in Claim 1. The sub-directories disclosed in *Van Huben* form the hierarchy of the LIB\_DIR directory, resulting in a single hierarchy. There is only one supposed hierarchy disclosed in *Van Huben*, which consists of nodes Library (which forms the base node in the directory tree), Version (which are sub-directories under the Library), Type Layout (which are sub-directories under Version), and Levels (which are sub-directories under Version). The actual data objects (e.g., files) of a design are then organized according to this directory structure. *Van Huben* fails to disclose, teach, or suggest “***one or more secondary content directories including one or more product classes, each product class being mapped to one or more product classes in the master global content directory***” by one or more associated class pointers, as recited in Claim 1.

Although Applicant believes these distinctions were clearly recited in Claim 1 prior to the amendments presented in this Response, Applicant has amended Claim 1 to recite that the one or more secondary content directories include one or more product classes “***organized in a hierarchy that is distinct from the hierarchy of the master global content directory,***” which is clearly not disclosed, taught, or suggested by the sub-directories disclosed in *Van Huben*. A sub-directory is organized by a hierarchy that is part of the hierarchy of the primary directory and would not include one or more product classes “***organized in a hierarchy that is distinct from the hierarchy of the master global content directory,***” as recited in Claim 1 as amended.

For at least these reasons, *Van Huben* clearly fails to disclose, teach, or suggest “*one or more secondary content directories*” that include “*one or more product classes organized in a hierarch that is distinct from the hierarchy of the master global content directory*” and for which “*each product class [of the secondary content directory is] mapped [by one or more associated class pointers] to one or more product classes in the master global content directory,*” as recited in Claim 1 as amended.

**D. *Van Huben* Fails to Disclose, Teach, or Suggest the Search Interface as Recited in Claim 1**

As another example, *Van Huben* fails to disclose, teach, or suggest at least the following limitations recited in Claim 1, as amended:

a search interface operable to:

receive a selection of a product class of a secondary content directory from a user, the selected product class having at least one class pointer identifying at least one product class in the master global content directory; and

communicate, in response to selection of the product class by the user, a search query to one or more of the databases to search product data stored in the databases identified by one or more of the product pointers to facilitate a commercial transaction involving one or more products.

At least due to its deficiencies with respect to the master global content directory and the one or more secondary content directories recited in Claim 1 and discussed above, *Van Huben* necessarily fails to disclose, teach, or suggest these limitations.

In any event, as disclosing the search interface as recited in Claim 1 prior to the amendments presented in this Response, the Examiner relies on column 17, line 65 through column 18, line 58 of *Van Huben*. The library search mechanism disclosed in *Van Huben* at this cited portion “allows data, which is used in multiple iterations of the design [of a project], to exist in only one place.” To execute a query using the system disclosed in *Van Huben*, the user provides a starting library level (e.g., LIB\_DIR – the primary directory disclosed in *Van Huben*, which the Examiner equates with the master global content directory recited in Claim 1), version (e.g., version of the design of a component of a project), and either a single type or a list of types (e.g., the data file type, such as “.ps”). (See Column 18, Lines 11-12; Figure 10; Column 17, Lines 42-64; Column 16, Lines 8-22; and Office Action,

Page 5) Based on these parameters, the system disclosed in *Van Huben* then searches through the sub-directories of the specified library for data objects (e.g., files) responsive to the request. These disclosures of *Van Huben* fail to disclose, teach, or suggest the “search interface” for several reasons.

First, the search mechanism disclosed in *Van Huben* does not “***receive a selection of a product class of the secondary content directory from a user, the selected product class having at least one class pointer identifying at least one product class in the master global content directory,***” as recited in Claim 1 as amended. Instead, the user in *Van Huben* specifies as part of the search query the library, version, and types which the user desires to search. As discussed above, each of these parameters are part of the single directory structure disclosed in *Van Huben* and are not “***a selection of a product class of the secondary content directory,***” as recited in Claim 1 as amended.

Second, at least because *Van Huben* fails to disclose, teach, or suggest “receiv[ing] a selection of a product class of the secondary content directory from a user, the selected product class having at least one class pointer identifying at least one product class in the master global content directory,” as recited in Claim 1 as amended, *Van Huben* necessarily fails to disclose, teach, or suggest “communicat[ing], ***in response to selection of the product class [of the secondary content directory] by the user,*** a search query to one or more of the databases to search product data stored in the databases identified by one or more of the product pointers to facilitate a commercial transaction involving one or more products,” as recited in Claim 1 as amended.

Third, as discussed above, *Van Huben* is unrelated to “electronic commerce” or “facilitat[ing] a commercial transaction.” Additionally, the search mechanism disclosed in *Van Huben* does not “communicate, in response to selection of the product class by the user, a search query to one or more of the databases to search product data stored in the databases identified by one or more of the product pointers ***to facilitate a commercial transaction involving one or more products,***” as recited in Claim 1 as amended.

For at least these reasons, *Van Huben* fails to disclose, teach, or suggest a search interface operable to “***receive a selection of a product class of a secondary content directory***

*from a user, the selected product class having at least one class pointer identifying at least one product class in the master global content directory” and to “communicate, in response to selection of the product class [of the secondary content directory] by the user, a search query to one or more of the databases to search product data stored in the databases identified by one or more of the product pointers to facilitate a commercial transaction involving one or more products,” as recited in Claim 1 as amended.*

#### **E. Conclusion with Respect to the Independent Claims**

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. § 2131. In addition, “[t]he elements must be arranged as required by the claim.” *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990); M.P.E.P. § 2131. As the many distinctions discussed above illustrate, *Van Huben* fails to disclose, either expressly or inherently, each and every limitation recited in Applicant’s Claim 1, as is required under the M.P.E.P. and governing Federal Circuit cases.

For at least these reasons, Applicant respectfully requests reconsideration and allowance of independent Claim 1 and its dependent claims. For at least analogous reasons, Applicant respectfully requests reconsideration and allowance of independent Claims 8, 15, and 22 and their dependent claims.

#### **III. The Dependent Claims are Allowable over the Rejections under 35 U.S.C. § 103(a)**

The Examiner rejects Claims 6, 13, and 20 under 35 U.S.C. § 103(a) as being unpatentable over *Van Huben* in view of U.S. Patent Application Publication 2001/0020240 A1 to Classen (“*Classen*”). The Examiner rejects Claims 7, 14, and 21 under 35 U.S.C. § 103(a) as being unpatentable over *Van Huben* in view of U.S. Patent 6,269,361 to Davis, et al. (“*Davis*”). Applicants respectfully disagree.

Dependent Claims 6-7, 13-14, and 20-21 depend from independent Claims 1, 8, and 15, respectively, which Applicant has shown above to be clearly allowable over *Van Huben*.

Both *Classen* and *Davis* fail to make up for the deficiencies of *Van Huben* with respect to independent Claims 1, 8, and 15. Thus, dependent Claims 6-7, 13-14, and 20-21 are allowable at least because of their dependence on Claims 1, 8, and 15, respectively. In addition, these claims recite further patentable distinctions over the prior art of record. To avoid burdening the record and in view of the clear allowability of Claims 1, 8, and 15, Applicant does not specifically discuss these distinctions in this Response. However, Applicant reserves the right to discuss these distinctions in the future, if appropriate.

The Examiner acknowledges that *Van Huben* fails to disclose certain limitations recited in dependent Claims 6-7, 13-14, and 20-21; however, the Examiner argues that it would have been obvious to one of ordinary skill in the art to modify *Van Huben* with *Classen* and *Davis* to achieve the limitations recited in these dependent claims. (See Office Action, Pages 8-9) Applicant does not admit that the proposed combination of *Van Huben* with either *Classen* or *Davis* is possible or that the Examiner has demonstrated the required teaching, suggestion, or motivation to combine or modify these references.

For example, it appears that the Examiner has provided alleged advantages that might be achieved by combining these references (assuming such combinations are technologically possible) and does not cite a reference or take Official Notice to purportedly provide a teaching, suggestion, or motivation to combine or modify these references. Applicant respectfully submits that such positions do not support a *prima facie* case of obviousness under 35 U.S.C. § 103(a) under the M.P.E.P. and the governing Federal Circuit case law, and Applicant reserves the right to argue these insufficiencies in detail in the future, if appropriate.

Applicant respectfully directs the Examiner's attention to the discussion of the heavy burden incumbent on the Examiner to demonstrate a *prima facie* case of obviousness, discussed above with reference to the provisional obviousness-type double patenting rejections. Applicant respectfully submits that the assertions that these combinations and modifications to *Van Huben* would have been obvious are insufficient to support a *prima facie* case of obviousness under 35 U.S.C. § 103(a) under the M.P.E.P. and the governing Federal Circuit case law.

For at least these reasons, Applicant respectfully submits that the rejections under 35 U.S.C. § 103(a) should be withdrawn. Applicants respectfully request reconsideration and allowance of dependent Claims 6-7, 13-14, and 20-21.

**IV. No Waiver**

All of Applicant's arguments and amendments are without prejudice or disclaimer. Additionally, Applicant has merely discussed example distinctions from the references cited by the Examiner. Other distinctions may exist, and Applicant reserves the right to discuss these additional distinctions in the future Response, if appropriate. By not responding to additional statements made by the Examiner, Applicant does not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicant are sufficient to overcome the Examiner's rejections.

**Conclusion**

Applicant has made an earnest attempt to place this case in condition for allowance. For at least the foregoing reasons, Applicant respectfully requests full allowance of all pending claims.

If the Examiner believes a telephone conference would advance prosecution of this case in any way, the Examiner is invited to contact Christopher W. Kennerly, Attorney for Applicant, at the Examiner's convenience at (214) 953-6812.

A check in the amount of \$450.00 is enclosed to cover the cost of a two-month extension of time. Although Applicant believes no other fees are due, the Commissioner is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

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